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## Calendar No. 1103

96TH CONGRESS 2D SESSION S. 2216

[Report No. 96-896] [Report No. 96-990]

To improve the intelligence system of the United States, and for other purposes.

### IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 3), 1980

Mr. MOYNIHAN (for himself, Mr. DOMENICI, Mr. WALLOP, Mr. JACKSON, Mr. NUNN, Mr. DANFORTH, Mr. CHAFEE, Mr. HAYAKAWA, Mr. PRESSLER, Mr. Armstrong, Mr. Hollings, Mr. Schmitt, and Mr. Simpson) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

#### August 13, 1980

Reported, under authority of the order of the Senate of August 6 (legislative day, June 12), 1980, by Mr. Chafee (for Mr. Bayh), with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

AUGUST 22 (legislative day, June 12), 1980

Referred to the Committee on the Judiciary for not to exceed 20 days that the

Senate is in session

SEPTEMBER 24 (legislative day, June 12), 1980
Reported by Mr. Kennedy, with amendments
[Omit the part in boldface brackets and insert the part in boldface italic]

## A BILL

To improve the intelligence system of the United States, and for other purposes.

1	Be it enacted by the Senate and House of Representa-
2	tives of the United States of America in Congress assembled,
3	That this Act may be cited as the "Intelligence Reform Act
4	of 1980''.
5	SEC. 2. Section 662(a) of the Foreign Assistance Act of
6	1961, as amended (22 U.S.C. 2422(a)), is amended to read
7	as follows:
8	"No funds appropriated under the authority of this
9	chapter or any other Act may be expended by or on behalf of
10	the Central Intelligence Agency for a special activity, unless
11	and until—
12	"(1) the President finds that the activity is impor-
13	tant to the national security of the United States and
14	reports, as soon as possible, a description and scope of
15	the activity to the Select Committee on Intelligence of
16	the United States Senate and to the Permanent Select
17	Committee on Intelligence of the United States House
18	of Representatives, or,
19	"(2) the National Security Council determines
20	that the activity does not involve substantial resources
21	or risks and falls within a category of special activities
22	which category shall have been found by the President

1	to be important to the national security of the United
2	States and which finding shall have been reported to
3	the Select Committee on Intelligence of the United
4	States Senate and to the Permanent Select Committee
5	on Intelligence of the United States House of Repre-
6	sentatives.
7	For the purposes of this subsection, the term 'special activity'
8	means an activity conducted abroad in support of national
9	foreign policy objectives which is designed to further official
10	United States programs and policies abroad and which is
11	planned and executed so that the role of the United States
12	Government is not apparent or acknowledged publicly, and
13	functions in support of such an activity, but not including
14	diplomatic activity or the collection and production of intelli-
15	gence or related support functions.".
16	SEC. 3. Section 6 of the Central Intelligence Agency
17	Act of 1949 (50 U.S.C 403g), is amended to read as follows:
18	"In the interests of the security of the foreign intelli-
19	gence activities of the United States and in order further to
20	implement the provise of section 403(d)(3) of this title that
21	the Director of Central Intelligence shall be responsible for
22	protecting intelligence sources and methods from unauthor-
23	ized disclosure, the Agency shall be exempted from the provi-
24	sions of any law which require the publication or disclosure of
25	the organization, functions, names, official titles, salaries, or

1 number of personnel employed by the Agency. In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with: The design, function, deployment, exploitation or utilization of scientific or 11 technical systems for the collection of foreign intelligence or counterintelligence information; special activities and for-13 eign intelligence or counterintelligence operations; investiga-14 tions conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security 18 services: Provided, That requests by American citizens and permanent resident aliens for information concerning themselves, made pursuant to sections 552 and 552a of title 5, shall be processed in accordance with those sections. The provisions of this section shall not be superseded except by a provision of law which is enacted after the date of this amendment and which specifically repeals or medifies the 25 provisions of this section.".

1	SEC. 4. (a) The National Security Act of 1947 is
2	amended by adding at the end thereof the following new title:
3	"TITLE V—PROTECTION OF CERTAIN NATIONAL
4	SECURITY INFORMATION
5	"PROTECTION OF IDENTITIES OF CERTAIN UNITED
6	STATES UNDERCOVER INTELLIGENCE OFFICERS,
7	AGENTS, INFORMANTS, AND SOURCES
8	"SEC. 501. (a) Whoever, having or having had author-
9	ized access to classified information that
10	"(1) identifies as an officer or employee of an in-
11	telligence agency, or as a member of the Armed
12	Forces assigned to duty with an intelligence agency,
13	any individual (A) who in fact is such an officer, em-
14	ployee, or member, (B) whose identity as such an offi-
15	eer, employee, or member is classified information, and
16	(C) who is serving outside the United States or has
17	within the last five years served outside the United
18	States;
19	"(2) identifies as being or having been an agent
<b>2</b> 0	of, or informant or source of operational assistance to,
21	an intelligence agency any individual (A) who in fact is
22	or has been such an agent, informant, or source, and
23	(B) whose identity as such an agent, informant, or
24	source is classified information,

1	intentionally discloses to any individual not authorized to re-
2	ecive classified information any information that identifies an
3	individual described in paragraph (1) or (2) as such an officer,
4	employee, or member or as such an agent, informant, or
5	source, knowing or having reason to know that the informa-
6	tion disclosed so identifies such individual and that the United
7	States is taking affirmative measures to conceal such individ-
8	ual's intelligence relationship to the United States, shall be
9	fined not more than \$50,000 or imprisoned not more than ten
10	years, or both.
11	"(b) Whoever with the intent to impair or impede the
12	foreign intelligence activities of the United States discloses to
13	any individual not authorized to receive classified information
14	any information that—
15	"(1) identifies as an officer or employee of an in-
16	telligence agency, or as a member of the Armed
17	Forces assigned to duty with an intelligence agency,
18	any individual (A) who in fact is such an officer, em-
19	ployee, or member, (B) whose identity as such an offi-
20	eer, employee, or member is classified information, and
21	(C) who is serving outside the United States or has
22	within the last five years served outside the United
23	States; or
24	"(2) identifies as being or having been an agent
25	of ar informant or source of apprehingal assistance to

1	an intelligence agency any individual (A) who in fact is
2	or has been such an agent, informant, or source, and
3	(B) whose identity as such an agent, informant, or
4	source is classified information,
5	knowing or having reason to know that the information dis-
6	closed so identifies such individual and that the United States
7	is taking affirmative measures to conceal such individual's
8	intelligence relationship to the United States, shall be fined
9	not more than \$5,000 or imprisoned not more than one year,
10	or both.
11	"DEFENSES AND EXCEPTIONS
12	"SEC. 502. (a) It is a defense to a prosecution under
13	section 501 that before the commission of the offense with
14	which the defendant is charged, the United States had public-
15	ly acknowledged or revealed the intelligence relationship to
16	the United States of the individual the disclosure of whose
17	intelligence relationship to the United States is the basis for
18	the prosecution.
19	"(b)(1) Subject to paragraph (2), no person other than a
20	person committing an offense under section 501 shall be sub-
21	jeet to prosecution under such section by virtue of section 2
22	or 4 of title 18, United States Code, or shall be subject to
23	prosecution for conspiracy to commit an offense under such
94	soction.

1	"(2) Paragraph (1) shall not apply in the case of a
2	person who acted with the intent to impair or impede the
3	foreign intelligence activities of the United States.
4	"(e) In any prosecution under section 501(b), proof of
5	intentional disclosure of information described in such sec-
6	tion, or inferences derived from proof of such disclosure, shall
7	not alone constitute proof of intent to impair or impede the
8	foreign intelligence activities of the United States.
9	"(d) It shall not be an offense under section 501 to
10	transmit information described in such section directly to the
11	Select Committee on Intelligence of the Senate or to the Per-
12	manent Select Committee on Intelligence of the House of
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13	Representatives.
13	Representatives.
<ul><li>13</li><li>14</li><li>15</li></ul>	Representatives.  "EXTRATERRITORIAL JURISDICTION
13 14 15 16	Representatives.  "EXTRATERRITORIAL JURISDICTION  "SEC. 503. There is jurisdiction over an offense under
13 14 15 16 17	Representatives.  "EXTRATERRITORIAL JURISDICTION  "SEC. 503. There is jurisdiction over an offense under section 501 committed outside the United States if the indi-
13 14 15 16 17 18	Representatives.  "EXTRATERRITORIAL JURISDICTION  "SEC. 503. There is jurisdiction over an offense under section 501 committed outside the United States if the individual committing the offense is a citizen of the United States."
13 14 15 16 17 18	Representatives.  "EXTRATERRITORIAL JURISDICTION  "SEC. 503. There is jurisdiction over an offense under section 501 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanents."
13 14 15 16 17 18	Representatives.  "EXTRATERRITORIAL JURISDICTION  "SEC. 503. There is jurisdiction over an offense under section 501 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immi-
13 14 15 16 17 18 19 20	**SEC. 503. There is jurisdiction over an offense under section 501 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).
13 14 15 16 17 18 19 20 21 22	"EXTRATERRITORIAL JURISDICTION  "SEC. 503. There is jurisdiction over an offense under section 501 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).  "PROVIDING INFORMATION TO CONGRESS

1	"DEFINITIONS
2	"SEC. 505. For the purposes of this title:
3	"(1) The term 'classified information' means information
4	or material designated and clearly marked or clearly repre-
5	sented, pursuant to the provisions of a statute or Executive
6	order (or a regulation or order issued pursuant to a statute or
7	Executive order), as requiring a specific degree of protec-
8	tion against unauthorized disclosure for reasons of national
9	security.
10	"(2) The term 'authorized', when used with respect to
11	access to classified information, means having authority,
12	right, or permission pursuant to the provisions of a statute,
13	Executive order, directive of the head of any department or
14	agency engaged in foreign intelligence or counterintelligence
15	activities, order of a United States district court, or provi-
16	sions of any rule of the House of Representatives or resolu-
17	tion of the Senate which assigns responsibility within the re-
18	spective House of Congress for the oversight of intelligence
19	activities.
20	"(3) The term 'disclose' means to communicate, pro-
21	vide, impart, transmit, transfer, convey, publish, or otherwise
22	make available.
23	"(4) The term 'intelligence agency' means the Central
24	Intelligence Agency or any intelligence component of the De-
<b>25</b>	partment of Defense.

- 1 "(5) The term 'informant' means any individual who fur-
- 2 nishes or has furnished information to an intelligence agency
- 3 in the course of a confidential relationship protecting the
- 4 identity of such individual from public disclosure.
- 5 "(6) The terms 'agent', 'informant', and 'source of oper-
- 6 ational assistance' do not include individuals who are citizens
- 7 of the United States residing within the United States.
- 8 "(7) The terms 'officer' and 'employee' have the mean-
- 9 ings given such terms by sections 2104 and 2105, respec-
- 10 tively, of title 5, United States Code.
- 11 "(8) The term 'Armed Forces' means the Army, Navy,
- 12 Air Force, Marine Corps, and Coast Guard.
- 13 "(9) The term 'United States' when used in a geo-
- 14 graphic sense, means all areas under the territorial sever-
- 15 eignty of the United States and the Trust Territory of the
- 16 Pacific Islands.''.
- 17 (b) The table of contents at the beginning of such Act is
- 18 amended by adding at the end thereof the following:

"TITLE V-PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

- "See. 501: Protection of identities of cortain United States undercover intelligence officers, agents, informants, and sources.
- "Sec. 502. Defenses and exceptions.
- "Sec. 503. Extraterritorial jurisdiction.
- "See. 504. Providing information to Congress.
- "See. 505. Definitions.".
- 19 That this Act may be cited as the "Intelligence Identities
- 20 Protection Act of 1980".

1	SEC. 2. (a) The National Security Act of 1947 is
2	amended by adding at the end thereof the following new title:
3	"TITLE V-PROTECTION OF CERTAIN
4	NATIONAL SECURITY INFORMATION
5	"PROTECTION OF IDENTITIES OF CERTAIN UNITED
6	STATES UNDERCOVER INTELLIGENCE OFFICERS,
7	AGENTS, INFORMANTS, AND SOURCES
8	"SEC. 501. (a) Whoever, having or having had author-
9	ized access to classified information that identifies a covert
10	agent, intentionally discloses any information identifying
11	such covert agent to any individual not authorized to receive
12	classified information, knowing that the information dis-
13	closed so identifies such covert agent and that the United
14	States is taking affirmative measures to conceal such covert
15	agent's intelligence relationship to the United States, shall be
16	fined not more than \$50,000 or imprisoned not more than ten
17	years, or both.
18	"(b) Whoever, as a result of having authorized access to
19	classified information, learns the identity of a covert agent
20	and intentionally discloses any information identifying such
21	covert agent to any individual not authorized to receive clas-
22	sified information, knowing that the information disclosed so
23	identifies such covert agent and that the United States is
24	taking affirmative measures to conceal such covert agent's
25	intelligence relationship to the United States, shall be fined

- 1 not more than \$25,000 or imprisoned not more than five
- 2 years, or both.
- 3 "(c) Whoever, in the course of a pattern of activities
- 4 [intended to identify and expose covert agents and] under-
- 5 taken for the purpose of uncovering the identities of
- 6 covert agents and exposing such identities with reason
- 7 to believe that such activities would impair or impede the
- 8 foreign intelligence activities of the United States, discloses
- 9 any information that identifies an individual as a covert
- 10 agent to any individual not authorized to receive classified
- 11 information, knowing that the information disclosed so iden-
- 12 tifies such individual and that the United States is taking
- 13 affirmative measures to conceal such individual's classified
- 14 intelligence relationship to the United States, shall be fined
- 15 not more than \$15,000 or imprisoned not more than three
- 16 years, or both.
- 17 "DEFENSES AND EXCEPTIONS
- 18 "Sec. 502. (a) It is a defense to a prosecution under

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- 19 section 501 that before the commission of the offense with
- 20 which the defendant is charged, the United States had pub-
- 21 licly acknowledged or revealed the intelligence relationship to
- 22 the United States of the individual the disclosure of whose
- 23 intelligence relationship to the United States is the basis for
- 24 the prosecution.

- 1 "(b)(1) Subject to paragraph (2), no person other than a
- 2 person committing an offense under section 501 shall be sub-
- 3 ject to prosecution under such section by virtue of section 2 or
- 4 4 of title 18, United States Code, or shall be subject to pros-
- 5 ecution for conspiracy to commit an offense under such
- 6 section.
- 7 "(2) Paragraph (1) shall not apply in the case of a
- 8 person who acted in the course of a pattern of activities [in-
- 9 tended to identify and expose covert agents and ] under-
- $oldsymbol{10}$  taken for the purpose of uncovering the identities of
- 11 covert agents and exposing such identities with reason
- 12 to believe that such activities would impair or impede the
- 13 foreign intelligence activities of the United States.
- 14 "(c) It shall not be an offense under section 501 to
- 15 transmit information described in such section directly to the
- 16 Select Committee on Intelligence of the Senate or to the Per-
- 17 manent Select Committee on Intelligence of the House of
- 18 Representatives.
- 19 "(d) It shall not be an offense under section 501 for an
- 20 individual to disclose information that solely identifies him-
- 21 self as a covert agent.
- 22 "(e) It shall not be an offense under subsection
- 23 (c) of section 501 if the disclosure of the information
- 24 described in such subsection is an integral part of
- 25 another activity such as news reporting of intelli-

1	gence failures or abuses, academic study of Govern-
2	ment policies and programs, enforcement by a
3	private organization of its internal rules and
4	regulations, or other activity protected by the first
5	amendment to the Constitution.
6	"PROCEDURES FOR ESTABLISHING COVER FOR
7	INTELLIGENCE OFFICERS AND EMPLOYEES
8	"Sec. 503. (a) The President shall establish procedures
9	to ensure that any individual who is an officer or employee of
10	an intelligence agency, or a member of the Armed Forces
11	assigned to duty with an intelligence agency, whose identity
12	as such an officer, employee, or member is classified informa-
13	tion and which the United States takes affirmative measures
14	to conceal is afforded all appropriate assistance to ensure that
15	the identity of such individual as such an officer, employee,
16	or member is effectively concealed. Such procedures shall
17	provide that any department or agency, other than the
18	Peace Corps, the Agency for International Develop-
19	ment, or their respective successor agencies, desig-
20	nated by the President for the purposes of this section shall
21	provide such assistance as may be determined by the Presi-
22	dent to be necessary in order to establish and effectively
23	maintain the secrecy of the identity of such individual as
24	such an officer, employee, or member.

1	"(b) Procedures established by the President pursuant
2	to subsection (a) shall be exempt from any requirement for
3	publication or disclosure.
4	"EXTRATERRITORIAL JURISDICTION
5	"Sec. 504. There is jurisdiction over an offense under
6	section 501 committed outside the United States if the indi-
7	vidual committing the offense is a citizen of the United
8	States or an alien lawfully admitted to the United States for
9	permanent residence (as defined in section 101(a)(20) of the
0	Immigration and Nationality Act).
l <b>1</b>	"PROVIDING INFORMATION TO CONGRESS
12	"Sec. 505. Nothing in this title shall be construed as
13	authority to withhold information from Congress or from a
<b>l</b> 4	committee of either House of Congress.
15	"DEFINITIONS
16	"Sec. 506. For the purposes of this title:
17	"(1) The term 'classified information' means in-
18	formation or material designated and clearly marked
19	or clearly represented, pursuant to the provisions of a
20	statute or Executive order (or a regulation or order
21	issued pursuant to a statute or Executive order), as re-
22	quiring a specific degree of protection against un-
23	authorized disclosure for reasons of national security.
24	"(2) The term 'authorized', when used with re-
25	spect to access to classified information means having

1	authority, right, or permission pursuant to the provi-
2	sions of a statute, Executive order, directive of the
3	head of any department or agency engaged in foreign
4	intelligence or counterintelligence activities, order of
5	any United States court, or provisions or any rule of
6	the House of Representatives or resolution of the
7	Senate which assigns responsibility within the respec-
8	tive House of Congress for the oversight of intelligence
9	activities.
10	"(3) The term 'disclose' means to communicate,
11	provide, impart, transmit, transfer, convey, publish, or
12	otherwise make available.
13	"(4) The term 'covert agent' means—
14	"(A) an officer or employee of an intelligence
15	agency or a member of the Armed Forces assigned
16	to duty with an intelligence agency,
17	"(i) whose identity as such an officer,
18	employee, or member is classified informa-
19	tion, and
20	"(ii) who is serving outside the United
21	States or has within the last five years
22	served outside the United States; or
23	"(B) a United States citizen whose intelli-
24	gence relationship to the United States is classi-
25	fied information, and

1	"(i) who resides and acts outside the
2	United States as an agent of, or informant
3	or source of operational assistance to, an in-
4	telligence agency, or
5	"(ii) who is at the time of the disclosure
6	acting as an agent of, or informant to, the
7	foreign counterintelligence or foreign counter-
8	terrorism components of the Federal Bureau
9	of Investigation; or
10	"(C) an individual, other than a United
11	States citizen, whose past or present intelligence
12	relationship to the United States is classified in-
13	formation and who is a present or former agent
14	of, or a present or former informant or source of
15	operational assistance to, an intelligence agency.
16	"(5) The term 'intelligence agency' means the
17	Central Intelligence Agency, a foreign intelligence
18	component of the Department of Defense, or the foreign
19	counterintelligence or foreign counterterrorism compo-
20	nents of the Federal Bureau of Investigation.
21	"(6) The term 'informant' means any individual
22	who furnishes information to an intelligence agency in
23	the course of a confidential relationship protecting the
24	identity of such individual from public disclosure.

1	"(7) The terms 'officer' and 'employee' have the
2	meanings given such terms by sections 2104 and 2105,
3	respectively, of title 5, United States Code.
4	"(8) The term 'Armed Forces' means the Army,
5	Navy, Air Force, Marine Corps, and Coast Guard.
6	"(9) The term 'United States', when used in a
7	geographic sense, means all areas under the territorial
8	sovereignty of the United States and the Trust Terri-
9	tory of the Pacific Islands.
10	"(10) The term 'pattern of activities' requires a
11	series of acts with a common purpose of objective.".
12	or objective.
13	"JUDICIAL REVIEW
14	"Sec. 507. (a) Any interested party, including
15	any news organization or any person who intends to
16	disclose any information identifying an individual
17	as a covert agent to any individual not authorized to
18	receive classified information, may institute in the
19	United States district court for the district in which
20	the defendant has his principal place of business, or
21	in the case of a newspaper or magazine, in the dis-
22	trict in which its principal editorial offices are lo-
23	cated, such actions as may be appropriate, including
24	an action for declaratory judgment, to construe the
25	constitutionality of any provision of this title or to

- 1 rule upon the constitutionality of such provision on
- 2 its face or as applied. The district court shall imme-
- 3 diately certify all questions of constitutionality of
- 4 this title to the United States court of appeals for
- 5 the appropriate circuit, which shall hear the matter
- 6 sitting en banc.
- 7 "(b) Notwithstanding any other provision of
- 8 law, any decision on a matter certified under subsec-
- 9 tion (a) shall be reviewable by appeal directly to the
- 10 Supreme Court of the United States. Such appeal
- 11 shall be brought no later than twenty days after the
- 12 decision of the court of appeals.
- 13 "(c) It shall be the duty of the court of appeals
- 14 and of the Supreme Court of the United States to
- 15 advance on the docket and to expedite to the greatest
- 16 possible extent the disposition of any matter certi-
- 17 fied under subsection (a) of this section.
- 18 "SEVERABILITY OF PROVISIONS
- 19 "SEC. 508. If any provision of this title or the
- 20 application thereof to any person or circumstance is
- 21 held invalid, the remainder of this title and the ap-
- 22 plication of such provision to any other person or
- 23 circumstance shall not be affected thereby.".
- 24 (b) The table of contents at the beginning of such Act is
- 25 amended by adding at the end thereof the following:

## "TITLE V—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

- "Sec. 501. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.
- "Sec. 502. Defenses and exceptions.
- "Sec. 503. Procedures for establishing cover for intelligence officers and employees.
- "Sec. 504. Extraterritorial jurisdiction.
- "Sec. 505. Providing information to Congress.
- "Sec. 506. Definitions.".

Amend the title so as to read: "A bill to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.".

# Calendar No. 1103

96TH CONGRESS S. 2216

[Report No. 96-896] [Report No. 96-990]

A BILL

To improve the intelligence system of the United States, and for other purposes.

January 24 (legislative day, January 3), 1980 Read twice and referred to the Select Committee on

AUGUST 13, 1980

Intelligence

Reported with an amendment and an amendment to the title

AUGUST 22 (legislative day, June 12), 1980
Referred to the Committee on the Judiciary with instructions

September 24 (legislative day, June 12), 1980
Reported with amendments

Approved For Release 2008/10/29 : CIA-RDP85-00003R000200090007-0